



STATE OF INDIANA

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CURTIS T. HILL, JR.  
ATTORNEY GENERAL

November 18, 2019

Brian W. Coffman  
Coffman Law Offices, P.C.  
2615 North Sheffield Avenue, Suite #1  
Chicago, Illinois 60614

RE: ***Subpoena duces tecum concerning Estate of Eric Jack Logan v. City of South Bend and Ryan O'Neill, Cause No. 3:19-cv-00495-DRL-MGG***

Dear Mr. Coffman:

The Office of the Indiana Attorney General represents the St. Joseph County Prosecutor's Office, which is in receipt of the subpoena *duces tecum* seeking production of "[a]ny and all case files, documents, photographs, videos, correspondence and investigation reports or materials related to the investigation of the police-involved shooting of Eric J. Logan (DOB 12-26-1964) on June 16, 2019" (the "Subpoena"). The Prosecutor's Office objects to the Subpoena and will not be responding to it for the reasons explained below.

The only responsive document to the Subpoena is the investigative case file of Special Prosecutor Richard J. Hertel, which concerns an ongoing investigation into the events surrounding the death of Eric J. Logan. The investigative case file is incomplete and not subject to production or disclosure until the investigation is closed. Investigatory materials are covered by investigatory privilege, which applies to prosecutors and is recognized by the District Court for the Northern District of Indiana and the Seventh Circuit. *See, e.g., Szany v. Garcia*, 2018 WL 6617240 at \*1, \*2 (N.D. Ind.) (stating that the investigatory privilege exists "to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witnesses and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise prevent interference in an investigation.") (quoting *Anderson v. Marion Cty. Sheriff's Dept.*, 220 F.R.D. 555, 560 (S.D. Ind. 2004)). Production of documents in the middle of an open investigation would interfere with the Special Prosecutor's ability to complete the investigation. And because the Special Prosecutor has not reached an investigatory conclusion, some documents in the investigatory case file are covered by the deliberative process privilege as well. *See Medical Licensing Bd. of Ind. v. Provisor*, 669 N.E.2d 406, 409-10 (Ind. 1996) (recognizing "the general bar against probing the mental processes of administrative decision-makers in their private deliberations . . .").

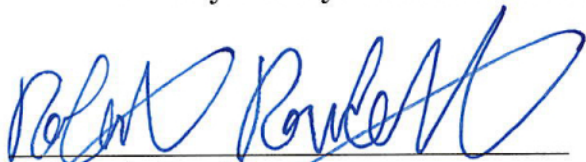
Production of incomplete investigatory materials would also violate Federal Rule of Evidence 106, which requires that evidence be provided in its complete form and not in a piecemeal fashion. See *Smith v. Housing Authority of South Bend*, 2014 WL 2468653 at \*1-\*2 (N.D. Ind.) (“[A] complete statement is required to be read or heard when it is necessary to . . . avoid misleading the trier of fact, or . . . insure a fair and impartial understanding.”) (quoting *United States v. Lewis*, 641 F.3d 773, 785 (7th Cir. 2011)). Production of documents relating to an ongoing and incomplete investigation would likely lead to misunderstandings, would not be fair or impartial, and could mislead the public, the District Court, and any experts reviewing the file.

Also, Federal Rule of Civil Procedure 45(d)(3)(A)(iv) states that the District Court must quash a subpoena that “subjects a person to undue burden.” The Subpoena subjects the Special Prosecutor to several undue burdens. First, because the file is incomplete and Plaintiff’s representative has suggested that the incomplete file would be shared with Plaintiff’s purported experts for analysis and review, a request to produce any file amounts to a request that the Special Prosecutor reach an investigatory conclusion before he has completed his investigation. Second, it would be an undue burden to require the Special Prosecutor to repetitively supplement his response every time a new document was generated that could be disclosed. Such interruptions would also interfere with the Special Prosecutor’s ability to complete the investigation; avoiding such interference is one of the policy rationales behind investigatory privilege. See *Szany*, 2018 WL 6617240 at \*2-\*3. Lastly, it is an undue burden to produce files that are not in the Special Prosecutor’s possession; because the file is not complete, there are, in a sense, no documents yet responsive to the Subpoena. Only when the file is complete are there responsive documents to provide.

Your assurances to not disclose any files to the media until the investigation is complete are insufficient to protect the Prosecutor’s Office from the deficiencies of the Subpoena identified above. As previously discussed, the Special Prosecutor is willing to produce discoverable portions of the investigative case file after the investigation is closed, which is estimated to be complete by February 2020.

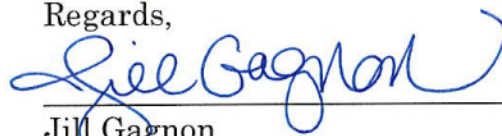
Please note this objection letter is in response only to the Subpoena directed to the St. Joseph County Prosecutor’s Office in this matter. If you have any questions or would like to further discuss this matter, please contact me directly at [REDACTED]

Thank you for your time and attention.



Robert A. Rowlett  
Deputy Attorney General  
Administrative and Regulatory  
Enforcement Litigation  
Office of the Indiana Attorney General

Regards,



Jill Gagnon  
Deputy Attorney General  
Administrative and Regulatory  
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